

12-62 PEUGH V. UNITED STATES

DECISION BELOW: 675 F.3d 736

LOWER COURT CASE NUMBER: 10-2184

QUESTION PRESENTED:

The U.S. Sentencing Guidelines Manual directs a court to "use the Guidelines Manual in effect on the date that the defendant is sentenced" unless "the court determines that use of the Guidelines Manual in effect on the date that the defendant is sentenced would violate the Ex Post Facto Clause of the United States Constitution." Eight courts of appeals have held that the Ex Post Facto Clause is violated where retroactive application of the Sentencing Guidelines creates a significant risk of a higher sentence. In the decision below, however, the Seventh Circuit has held that the Ex Post Facto Clause is never violated by retroactive application of the Sentencing Guidelines because the Guidelines are advisory, not mandatory.

The question presented is:

Does a sentencing court violate the Ex Post Facto Clause by using the U.S. Sentencing Guidelines in effect at the time of sentencing rather than the Guidelines in effect at the time of the offense, if the newer Guidelines create a significant risk that the defendant will receive a longer sentence?

CERT. GRANTED 11/9/2012